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EXAMINER

DEPUMPO, DANIEL G

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/883,592

Applicant(s)

CONNOR, STEVEN ELLIOTT

Examiner

Daniel G. DePumpo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election without traverse of Species I and Species B (claims 1-5, 8, 9 and 10 allegedly readable thereon) in Paper No. 5 is acknowledged.
2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. See page 3 of applicant's specification.
3. The disclosure is objected to because of the following informalities: At page 7, line 10, it appears that "pivotably" should be --pivotal--.

Appropriate correction is required.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant urges that claim 5 reads on the elected species. It is presumed that applicant considers that this claim reads on the species depicted in fig. 7. However, the operation of the device as shown in fig. 7 is unclear. It is unclear how pin 22 can act as a pivot pin when it is

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disposed in a slot, such as slot 50. It appears that the elements joined by pin 22 disposed in a slot would “flop around”, rather than “pivot”. Clarification and/or correction are required.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-5 and 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefiniteness and should be revised carefully in their entirety. Some examples of such indefiniteness are listed below.

In claim 1, it is unclear which element comprises the “generally rectangular channel” and which element comprises the “complementary rectangular member”. These phrases are used inconsistently throughout the claims. For example, line 5 recites “a hitching mechanism for attaching ... to said generally rectangular channel”. Then, at lines 10 and 11 it is recited that the “hitch member” comprises a “generally rectangular channel member”. It is unclear how the hitching mechanism can attach to, and comprise part of, the generally rectangular channel member. Furthermore, lines 11-14 seem to recite that the “generally rectangular channel” engages the “generally rectangular member”. It is unclear what constitutes the “generally rectangular member”. Additionally, a “telescopically engaging” structure is recited in both lines 2 and 14. However, the disclosed device appears to contain only one telescopically engaging structure. In lines 7 and 8, it is unclear what is meant by “a pair of at least one horizontally pivotal wheel assemblies” (emphasis added). In line 13, “said fixed channel” lacks antecedent basis. **Claim 9 contains these same deficiencies.**

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Applicant urges that claim 5 reads on the elected species. Claim 5 recites that the first generally rectangular member includes a vertically oriented arcuate slot. The only slot depicted in the elected species is in fig. 7. This figure does not show a rectangular member. Instead, fig. 7 depicts a cylindrical member. In view of applicant's assertion that this claim reads on the elected species, the scope of this claim cannot be determined. If applicant agrees that this claim does not actually read on the elected species, this should be indicated in response to this office action. This claim will then be withdrawn from further consideration.

Applicant urges that claim 8 reads on the elected species. Claim 8 recites a pair of spaced-apart hitching mechanisms. The elected embodiment of fig. 1 only contains a single hitching mechanism. In view of applicant's assertion that this claim reads on the elected species, the scope of this claim cannot be determined. If applicant agrees that this claim does not actually read on the elected species, this should be indicated in response to this office action. This claim will then be withdrawn from further consideration.

In claim 9, line 2, it is unclear which element the term "having" refers to. Also, lines 3 and 4 recite that the towing vehicle includes a tubular (male) member. However, it does not appear that a towing vehicle would include a "tubular (male) channel". A towing vehicle usually includes a female receiver. In line 11, "are is" should be corrected. In line 13, the term "consisting" is indefinite because this is a closed term. The disclosed hitch mechanism clearly contains additional elements.

Claim 10 depends from nonexistent claim 59. Claim 10 has not be further treated on the merits.

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As mentioned above, these are only some examples of indefiniteness in the claims. The claims are replete with indefiniteness and should be corrected throughout.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 3, 4, 6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ross '135.

Ross teaching a combination having the structure as claimed. The combination includes telescopically engaging channels 44/46, pivotal wheels 20, and a pivotal member (i.e. the pin which joins elements 74 and 78, as shown in fig. 4). Note the pivoting relationship as depicted in fig. 9. The wheel assemblies have U-shaped housings as shown in fig. 5c. The pivotal member is considered to include a slot to the same degree as applicant's elected embodiment. Regarding claim 8, elements 88 are considered to comprise spaced apart hitching mechanisms to the same degree as claimed and disclosed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peterson, Anderson, Hammons, Zwick, Golze, Schweigert, Livingston, and Holsclaw disclose various devices having features in common with the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel G. DePumpo whose telephone number is 703 308-1113. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703 308 1113. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.



Daniel G. DePumpo  
Primary Examiner  
Art Unit 3611

dgd  
8/21/03